

# **CONSTRUCTION CONTRACTING**

## **TEXT REFERENCE**

FEDERAL ACQUISITION INSTITUTE

CURRICULUM OF PROCUREMENT  
TRAINING COURSES

CURRENT THROUGH  
FAC 90-26

**OFFICE OF ACQUISITION POLICY**  
**GENERAL SERVICES ADMINISTRATION**

# INTRODUCTION

## THE FEDERAL ACQUISITION INSTITUTE (FAI) CURRICULUM

### Courses

In FY91, the FAI began providing acquisition trainers and educators with instructional materials for a new Contract Management curriculum. This curriculum includes the following courses, listed in a recommended order of attendance.

1. Introduction to Contracting\*
2. Procurement Planning\*
3. Simplified Acquisition/FACNET\*\*
4. Contracting By Sealed Bidding\*
5. Price Analysis\*
6. Contracting By Negotiation\*
7. Cost Analysis\*
8. Contract Negotiation Techniques\*
9. Contract Administration\*
10. Contract Law
11. Types of Contracts
12. Source Selection\*
13. Advanced Negotiation Procedures\*\*
14. Intermediate Contract Pricing\*\*
15. Advanced Contract Administration\*\*
16. Termination/Claims

### **Specialized Courses**

*(in alphabetical order)*

1. Acquisition of FIP Resources\*\*
2. Contracting for Architect/Engineer Services\*
3. Construction Contracting\*
4. Managing the Contracting Activity
5. Contracting Officer Technical Representative\*\*

### Offerors

Each of the above courses will be offered by the GSA Interagency Training Center. Other Federal acquisition trainers and educators may incorporate FAI instructional materials in their respective curricula (perhaps under different course titles than the above).

\* Currently available (as of 5-95)

\*\* Projected to be available in 1995

## INTRODUCTION

### OVERVIEW OF CONSTRUCTION CONTRACTING

#### Duties

The following duties are covered in this course:

- A/E Design Review
- Set-Asides
- Presolicitation Conferences
- Davis-Bacon Wage Rates
- Subcontracting Plan
- Processing Offers
- Bonds
- Contract Administration Planning
- Preconstruction Conference
- Inspection
- Government Furnished Property
- Progress Payments
- Delays
- Change Orders
- Remedies

This edition of the Construction Contracting Text/Reference is current through FAC 90-26.

#### Length

Two weeks (10 days)

#### Daily Hours

8:00 to 4:30. The time from 3:30 to 4:30 is reserved for reading assignments and/or one on one questions with the instructor. You may leave at 3:30 if necessary, but you are expected to complete all reading assignments.

#### Who Should Attend

Contract Specialists (GS-9 to GS-11) who have successfully completed:

- Introduction to Contracting,
- Procurement Planning,
- Contracting by Sealed Bidding,
- Contracting by Negotiations,
- Cost Analysis, and
- Contract Administration.

**4.5 Prepare for  
Preconstruction  
Conference**

**FAR 36.212**

The contracting officer will inform the successful offeror of significant matters of interest, including

1. Statutory matters such as labor standards, and subcontracting plan requirements; and
2. Other matters of significant interest, including who has authority to decide matters such as contractual, administrative (e.g., security, safety, and fire and environmental protection), and construction responsibilities.

This postaward orientation may take the form of a letter or a preconstruction conference which aids both the Government and the contractor to:

- Achieve a clear and mutual understanding of all contract requirements; and
- Identify and resolve potential problems.

**SELECTING CONTRACTS FOR THE PRECONSTRUCTION CONFERENCE**

As a minimum, the Contracting Officer shall consider:

- The nature and extent of the preaward survey.
- Prior discussions held with the contractor.
- The type, value, and complexity of the project.
- Acquisition history of this type of project.
- Requirements for installed equipment.
- Urgency of the completion date(s).
- Phased completion dates.
- Length and number of construction activities.
- Extent of subcontracting.
- Contractor's performance history, construction experience, and expertise.
- Contractor's status as a small or small disadvantaged business concern.
- Performance history in the government's subcontracting programs.
- Safety precautions required for hazardous material or operations.
- Demolition requirements.
- Coordination required.

*Exhibit 4-11*

It is also helpful in assisting small businesses and small disadvantaged business concerns. However, it is up to the contracting officer to decide which contracts will have a preconstruction conference. Exhibit 4-11 lists considerations that may be useful in making the decision.

FAR 52.222-9

**Apprentices** are considered learners of a craft or trade, and are recognized as such only when they are

- participating in a bona fide apprenticeship program, registered with the Bureau of Apprenticeship and Training, DOL or with a certified state apprenticeship agency, or
- in the first 90 days of probationary employment in such an apprentice program.

The contractor must submit in advance, or with the first payroll report, evidence of the following:

- Apprentice journeyman ratio.
- Wage rates including full fringe benefits for the apprentice.
- Percent of the journeyman benefits which have been established for the project area.

You must

- Review the written evidence prior to the apprentice appearing on the payrolls.
- If acceptable, immediately notify contractor.
- If unacceptable, advise the contractor that the employee must be paid at the full journeyman wage.

Helper Classification

**[ NOTE: Congress has suspended helper regulations until 10-1-95. See FR 11-5-93, p. 58954.]**

FAR 22.401(b)(3)

In one of the few revisions made in the Davis Bacon Act, a new definition was added in January 1991 concerning that of a "helper". Do not confuse the definition "helper" with that of an "apprentice"\*. Although they may appear similar, the "apprentice" is learning a particular trade and must be registered in an approved bona fide apprenticeship training program. The permissible ratio of helpers to journeymen on a project is **up to two helpers for every three journeymen on a project.**

The description of a helper is contained in Exhibit 6-8.

#### DEFINITION OF A "HELPER" CLASSIFICATION

A "helper" is a semi-skilled worker (rather than a skilled journeyman mechanic) who works under the direction of and assists a journeyman. Under the journeyman's direction and supervision, the helper performs a variety of duties to assist the journeyman, such as preparing, carrying and furnishing materials, tools, equipment, and supplies, maintaining them in order; cleaning and preparing work areas; lifting, positioning, and holding materials or tools; and other related semi-skilled tasks as directed by the journeyman. A helper may use tools of the trade at and under the direction and supervision of the journeyman. The particular duties performed by a helper may vary according to area practice.

#### Exhibit 6-8

\*Note also that FAR 22.401(b)(2) defines a trainee as a "person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the DOL, Employment and Training Administration ..."

## OTHER LABOR LAWS

LAW	PURPOSE	MONITORING & ENFORCEMENT	APPLICABILITY	PENALTIES
Fair Labor Standards Act	Ensures that all employees working on goods for interstate & foreign commerce will have a minimum wage & time and a half for overtime. Establishes child labor standards.	DOL has major responsibility for enforcement. Cooperate with the Wage and Hour Division of the DOL. No active enforcement required other than warning the contractor that the act applies.	The act is universal for all contracts.	<ul style="list-style-type: none"> <li>* Assessment of double the amount of wages.</li> <li>* \$10,000 fine.</li> <li>* Six months imprisonment if convicted more than twice.</li> </ul>
Contract Work Hours & Safety Standards	Requires all hours in excess of 40 in one week to be compensated at a rate of payments of not less than one and one-half times the basic rate.	Review payrolls and conduct field interviews. Withhold payments to contractor if violations are discovered. CO must inform employees involved of actions.	Applicable to construction contracts over \$2,000, and all other contracts over \$2,500.	<ul style="list-style-type: none"> <li>* Suspend payments to contractor of amount equal to wages due, plus \$10 per-day-per-employee.</li> </ul>
Equal Opportunity	Ensures that there is no discrimination on the basis of race, creed, or national origin in regard to hiring, firing, training or promotion.	Ensures posters are displayed at the job site. Enforcement by Office of Federal Contract Compliance Programs (OFCCP). CO has no direct involvement except to notify the OFCCP regional office of violations.	All Federal contracts \$10,000 or more.	<ul style="list-style-type: none"> <li>* Termination for Default or suspended.</li> <li>* Contractor ineligible for further contracts (Debarment).</li> </ul>
Copeland Act	Prevents kickbacks and unlawful payroll deductions. Intended to aid in the enforcement of minimum wage provisions of the Davis-Bacon Act and limits deductions that may be taken from an employee's pay.	Monitor contractor's weekly pay records to conduct major investigations of violations and prepares reports for submission to the D.O.L.	All Federal contracts \$2,000 or more.	<ul style="list-style-type: none"> <li>* Fine up to \$5,000</li> <li>* Imprisonment up to 5 years.</li> <li>* Debarment</li> </ul>

<b>FAR GUIDANCE FOR THE MODIFICATION PROCESS</b>	
<b>ACTION</b>	<b>FAR REFERENCE</b>
Contractor requested to submit a proposal.	FAR 15.804
Government estimate prepared.	FAR 36-203
Proposal is analyzed.	
1. Cost & Price Analysis.	FAR 14.804
2. Cost Principles.	FAR Part 31
3. Audits.	FAR 15-801
4. Direct Cost Analysis.	FAR 31.202
5. Indirect Cost Analysis.	FAR 31.203
6. Profit Allowability.	N/A
7. Profit Objectives.	FAR 15.901(c)
8. Certified Cost or Pricing Data.	FAR 15.804-2
Prenegotiation Objectives are established.	FAR 15.807
Negotiation.	FAR PART 15
Price Negotiation Memorandum.	FAR 15.808

*Exhibit 8-24*

#### Requirement for Cost Breakout

In anticipation of modifications which will be required during performance of a construction contract, there is a need for the contractor to present costs in such a manner that a comparison can be made to the Government estimate. Agencies have initiated special provisions to require the contractor to provide a cost breakdown in connection with any proposal made for a contract modification. (See Exhibit 8-25 for a typical clause.)

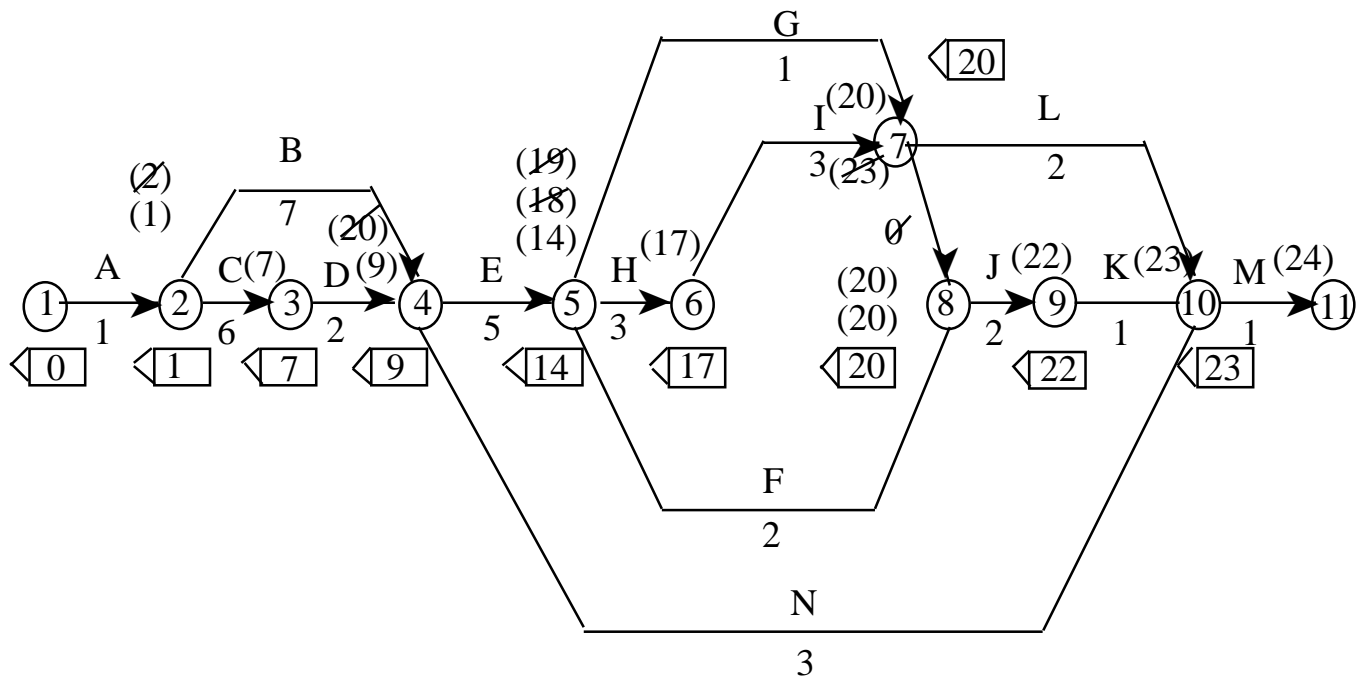
#### FAR 15.804-6(b)

Your agency may use a similar one. In lieu of a specific clause, some agencies merely require the contractor to submit the proposal on an agency form, which requires that the proposal be broken down into cost elements. SF 1411, Contract Pricing Proposal Cover Sheet, must be submitted on proposals for price adjustments exceeding \$500,000.

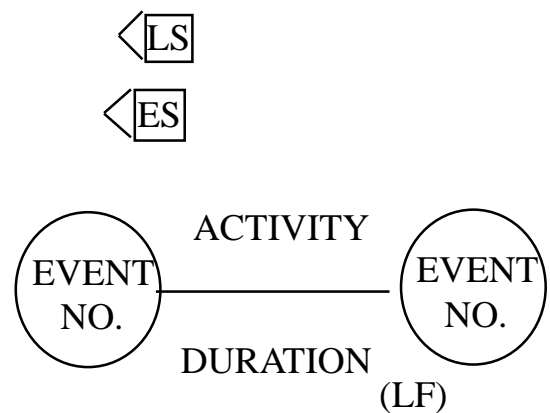
#### Breakdown of Costs

In breaking down the price, the contractor must also provide individually priced breakdowns submitted by the subcontractors. The price breakdown is divided into the activities which are affected by the modification. An activity is a task or work element which is required to be accomplished by a single trade.

## BACKWARD PASS



ACTIVITY	DURATION	ES	EF	LS	LF
A				0	1
B				1	9
C				1	7
D				7	9
E				9	14
F				14	20
G				14	20
H				14	17
I				17	20
J				20	22
K				22	23
L				20	23
M				23	24
N				9	23
DUMMY				20	20



LEGEND

Exhibit A-17



## INDEX

Disputes. *See also* Claims

- Contract Disputes Act 9-5
- effective management of 9-7
- source of
  - disagreements over contract scope 9-11
  - interpretation of contract language 9-11, 9-12

Drawings

- description of 2-9
- in preconstruction conference report 4-30, 4-31
- information contained in 2-10
- reviewing 2-9
- Specifications and Drawings for Const. 5-14

## E

- Eichleay Method 7-41
- Environmental Protection 4-34
- Equitable Adjustment
  - definition of 8-40
  - deleted work 8-45
  - guidance in pricing adjustments 8-47
  - item substitution 8-45
  - modifications vs. T for C 8-43
  - sample cost breakdown clause 8-42
  - using SF 1411, Contract Pricing ... Sheet 8-41

## F

- Five-Year Budget Cycle 1-6
- Float 7-25
- Funding
  - at time of bid opening 3-11
  - certification of 2-8
  - notice of award 3-33
  - statutory cost limitation 3-21
  - when using additive/alternate bids 3-24

## G

- Gantt-Type Bar Chart 7-20
- Government-Furnished Property (GFP)
  - equipment 5-30
  - FAR definition of 5-30
  - list of applicable FAR clauses 5-31
  - property administrator 5-31

## H

- Helper 6-13
- Hometown Plan 2-31

## I

- Independent Government Estimate
  - at time of bid opening 3-11
  - basis of 3-19
  - needed for modifications over 25K 8-43
- Inspection
  - Inspection of Construction clause
    - authorizing modification 8-27 to 8-30
    - policy 6-36
    - used as a remedy 9-33
  - key "quality" terms related to 6-37
  - levels of 6-39
  - types of
    - interim 6-40
    - joint 6-41
    - occupancy 6-41
    - off-site 6-40
    - pre-final 6-41
  - Use and Possession Prior to Completion 6-41
  - typical duties of inspector 6-38
  - typical inspection group 6-42
  - using CQC system 6-39
  - vs. warranty 9-40
- Insurance
  - flowdown requirement 5-25
  - in preconstruction conference report 4-33
  - Insurance-Work on a Govt. Install. clause 5-24
  - minimum coverages 5-24

## J

- Julian Date Calendar 9-32

## L

- Labor Laws
  - determining applicability chart 6-5
  - list of 6-5
- Labor Relations 6-27
- Limitations on Subcontracting clause 2-18
- Line of Balance Technique 7-27
- Liquidated Damages - Construction
  - clause 9-29
  - computing amount of 9-31
  - substantial completion rule 9-31
  - using alternate I with phased projects 9-30
- Local Regulations 4-32